

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

ORIGINAL

75-7280

To be argued by
DANIEL M. COHEN
(10 Minutes)

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

RAMSEY CLARK and CHANDRA CARB,

Plaintiffs-Appellants

against

ALEX ROSE, DONALD SZANTHO HARRINGTON, THE LIBERAL
PARTY OF THE STATE OF NEW YORK, THE STATE EXECUTIVE
COMMITTEE, JACOB K. JAVITS and ARTHUR H. SCHWARTZ,
REMO J. ACITO, WILLIAM H. McKEON and DONALD
RETTALIATA as members of the State Board of Elections,

Defendants-Appellees.

**ATTORNEY GENERAL'S BRIEF FOR APPELLEES,
SCHWARTZ, ACITO, McKEON AND RETTALIATA,
MEMBERS OF THE NEW YORK STATE BOARD
OF ELECTIONS**

LOUIS J. LEFKOWITZ

Attorney General of the
State of New York

*Attorney for Defendants-Appellees,
Members of New York State Board
of Elections; also appearing pro se,
pursuant to New York Executive
Law, § 71 and CPLR, § 1012-b*

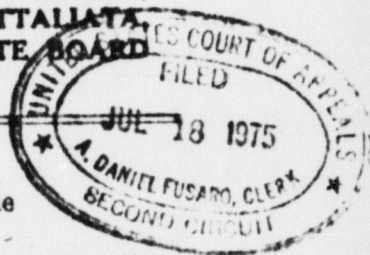
SAMUEL A. HIRSHOWITZ

First Assistant Attorney General

DANIEL M. COHEN

Assistant Attorney General

of Counsel



United States Court of Appeals
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Plaintiffs-Appellants,
against

ALEX ROSE, DONALD SZANTHO HARRINGTON, THE LIBERAL
PARTY OF THE STATE OF NEW YORK, THE STATE EXECUTIVE
COMMITTEE, JACOB K. JAVITS and ARTHUR H. SCHWARTZ,
REMO J. ACITO, WILLIAM H. McKEON and DONALD
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**ATTORNEY GENERAL'S BRIEF FOR APPELLEES,
SCHWARTZ, ACITO, McKEON AND RETTALIATA,
MEMBERS OF THE NEW YORK STATE BOARD
OF ELECTIONS**

In so far as this appeal may be deemed, even indirectly, to attempt to review the 1974 judgment of the three-judge Court in the Southern District of New York (379 F. Supp. 73), dismissing the plaintiffs' attack upon the constitutionality of the Wilson-Pakula law (N.Y. Election Law, § 137), plaintiffs' appeal is belated; and is taken to the wrong Court.

Review of the judgment of the three-judge Court dismissing plaintiffs' claim that the statute was unconstitutional should have been sought in the United States Supreme Court (*Goosby v. Osser*, 409 U.S. 512 [1973]), when such review would have been timely and not academic.



The three-judge Court's decision was not restricted to an issue of standing. *Cf. Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90 (1974).

The Board of Elections, not being a partisan involved in the internal dispute arising from plaintiffs' allegations concerning New York State Liberal Party practices, need not respond herein to other issues which the plaintiffs seek to present.

CONCLUSION

The appeal to this court should be dismissed, for lack of jurisdiction, in so far as it is taken against the members of the State Board of Elections and seeks to resurrect the issue of the constitutionality of New York Election Law, § 137.

Dated: July 16, 1975.

Respectfully submitted,
 LOUIS J. LEFKOWITZ
 Attorney General of the
 State of New York
Attorney for Defendants-Appellees,
 Members of New York State Board
 of Elections; also appearing *pro se*,
 pursuant to New York Executive
 Law, § 71 and CPLR, § 1012-b

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

DANIEL M. COHEN
Assistant Attorney General
of Counsel

(58283)



STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MARILYN L. HOWARD, being duly sworn, deposes and says that she is employed in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for Defendants-Appellees herein. On the 18th day of July, 1975, she served ^{three copies of} the annexed upon the following named persons:

Leon Friedman, Esq.
Hofstra Univ. Law School
Hempstead, New York 11550

Lawrence Schilling, Esq.
36 West 44th Street
New York, N.Y. 10036

Herzfeld & Rubin, Esqs.
40 Wall Street
New York, New York 10005

Attorneys in the within entitled action by depositing a true and correct copy thereof, properly enclosed in a postpaid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said attorneys at the addresses within the State designated by them for that purpose.

Marilyn L. Howard
MARILYN L. HOWARD

Sworn to before me this
18th day of July, 1975.

David M. Blech
Assistant Attorney General
of the State of New York